

REPUBLIC OF SOUTH AFRICA

BUILT ENVIRONMENT PROFESSIONS BILL

*(As introduced in the National Assembly (proposed section 75);
explanatory summary of Bill published in Government Gazette No. 31093 of 30 May 2008)
(The English text is the official text of the Bill)*

(MINISTER OF PUBLIC WORKS)

[B 53—2008]

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BILL

To establish the South African Council for the Built Environment; to provide for the establishment of professional boards; to regulate education, training and registration of professionals within the built environment; to provide for disciplinary hearings in respect of unprofessional conduct by registered persons; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. (1) In this Act, unless the context indicates otherwise—
 - “**accredit**” means recognition or certification of educational programmes by the council or the relevant professional board in terms of this Act or any other law as meeting the prescribed education and training requirements for registration under this Act; 5
 - “**built environment**” means the physical world that has been intentionally created through science and technology for the benefit of mankind; 10
 - “**built environment profession**” means any profession in the built environment for which a professional board has been established in terms of section 15, and includes any professional category within that profession;
 - “**candidate**” means a person registered as such in a built environment profession;
 - “**committee**” means any committee of the council or of a professional board established under this Act; 15
 - “**community representative**” means a person appointed by the Minister in terms of section 6 as a representative of the community and who is not registered in terms of this Act;
 - “**council**” means the South African Council for the Built Environment established by section 2; 20
 - “**fruitless and wasteful expenditure**” has the meaning as assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - “**irregular expenditure**” has the meaning as assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); 25
 - “**Minister**” means the Minister responsible for public works;
 - “**prescribe**” means prescribe by regulation;
 - “**professional**” means a person who is registered as such in any of the built environment professions;
 - “**professional board**” means a professional board established in terms of section 15; 30
 - “**professional category**” means a division or subdivision of a field in which any registered built environment profession may be practiced;
 - “**register**”—
 - (a) when used as a noun, means a register kept in accordance with this Act and, when used in relation to any professional category or a registered person in any such professional category in respect of which a register is kept, means the register kept for that category; and 35

- (b) when used as a verb, means to enter information into a register contemplated in paragraph (a);
- “**registrar**” means a person appointed as registrar in terms of section 12;
- “**regulation**” means any regulation made in terms of this Act;
- “**rule**” means any rule made in terms of this Act; 5
- “**speciality**”, in relation to a professional registered in respect of any built environment profession, means any particular discipline, division or subdivision of a profession that is recognised under this Act as a speciality in which such professional specialises or intends to specialise;
- “**this Act**” includes any regulation and rule, and any notice or order issued or made under this Act; 10
- “**unauthorised expenditure**” has the meaning assigned to it in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**unprofessional conduct**” means conduct which, when regard is had to the profession of a person registered under this Act, is improper, disgraceful, dishonourable or unworthy; 15
- “**voluntary association**” means any voluntary association recognised by the council in terms of section 5.
- (2) Any administrative process conducted or decision taken in terms of this Act must be conducted or taken in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), unless otherwise provided for in this Act. 20

CHAPTER I

ESTABLISHMENT, OBJECTS AND FUNCTIONS OF COUNCIL AND PROFESSIONAL BOARDS

- Establishment of council** 25
2. (1) There is hereby established a juristic person to be known as the South African Council for the Built Environment.
- (2) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the council.
- Objects of council** 30
3. The objects of the council are to—
- (a) promote and maintain a sustainable built environment and natural environment;
- (b) promote ongoing human resource development in the built environment industry; 35
- (c) promote liaison in the field of education and training of persons in the built environment, both in the Republic and elsewhere, and to promote the standard of such education and training in the Republic;
- (d) promote appropriate standards of health, safety and environmental protection within the built environment industry; and 40
- (e) promote sound governance and transformation within the built environment professions.
- Functions of council**
4. (1) The council must—
- (a) control and exercise authority over professional boards; 45
- (b) co-ordinate the activities of any professional board established in terms of this Act and must act as communicatory body for such professional board;
- (c) promote and regulate inter-professional liaison between built environment professions in the public interest;
- (d) determine strategic policy in accordance with national public works policy determined by the Minister, and must make decisions in terms thereof with regard to the professional boards and the built environment professions in respect of matters such as finance, education, training, registration, code of conduct, disciplinary procedure, scope of the professions, inter-professional matters and continued maintenance of professional competence; 50 55

- (e) subject to the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), the Higher Education Act, 1997 (Act No. 101 of 1997), the Skills Development Act, 1998 (Act No. 97 of 1998), and the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), control and exercise authority in respect of all matters affecting the education and training of persons in the built environment; 5
- (f) ensure the uniform application of norms and guidelines set by professional boards throughout built environment professions;
- (g) advise government on any matter falling within the scope of the built environment, including resource utilisation, socio-economic development, public health, safety and protection of the environment, and for this purpose must carry out such investigations as it or the relevant Minister deems necessary; 10
- (h) communicate to the Minister information on matters of public importance acquired by the council in the course of the performance of its functions under this Act; 15
- (i) advise the Minister with regard to the amendment of this Act, if necessary, in order to support the norms and values of the built environment professions;
- (j) facilitate inter-ministerial co-operation concerning issues relating to the built environment; 20
- (k) provide advice, if requested by the Minister, in respect of national policy that could impact on the built environment human resource development in relation to the built environment professions and to the recognition of new professions;
- (l) comment, if requested by the Minister, on all proposed legislation impacting on the built environment industry; 25
- (m) coordinate the establishment of mechanisms for professionals to gain international recognition;
- (n) ensure the consistent application of policy by the professional boards with regard to— 30
- (i) accreditation of education and training institutions;
 - (ii) the registration of different categories of professionals;
 - (iii) key elements of competence testing of professionals;
 - (iv) a code of conduct for professionals;
 - (v) the principles upon which professional boards must base the determination of fee tariffs which professionals may charge for their services, taking into account any legislation relating to the promotion of competition; and 35
 - (vi) standards of health, safety and environmental protection within the built environment; 40
- (o) in consultation with professional boards, obtain recognition for professional boards as bodies responsible for the establishment of education and training standards in terms of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995);
- (p) promote co-ordination between the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997), and the professional boards in relation to the accreditation of educational institutions; 45
- (q) submit to the Minister—
- (i) a five-year strategic plan within six months of the council coming into office, which must include details as to how the council plans to fulfill its objectives under this Act; 50
 - (ii) every six months, a report on the status of built environment professions and on matters of public importance that have come to the attention of the council in the course of the performance of its functions under this Act; and 55
 - (iii) an annual report within six months of the end of the financial year; and
- (r) ensure that an annual budget for the council and professional boards is drawn up and that the council and professional boards operate within the parameters of such budget.
- (2) The council may— 60
- (a) acquire, hire or dispose of property, borrow money on the security of the assets of the council and accept and administer any trust or donation;

- (b) render financial assistance to professional boards in order to enable such professional boards to perform their functions;
 - (c) consider any matter affecting the professions registrable under this Act and make representations or take such action in connection therewith as the council deems necessary; and 5
 - (d) delegate to any professional board or committee or any person such of its functions as it may determine, but is not divested of any function so delegated.
- (3) The council may perform such other functions as may be prescribed and, generally, do all such other things as may be necessary or expedient in order to achieve the objects of this Act. 10

Recognition of voluntary associations

5. (1) The council must determine, after consultation with a professional board, the requirements with which a voluntary association must comply to qualify for recognition by the relevant professional board.
- (2) Any voluntary association may apply in the prescribed manner to the relevant professional board to be recognised as such. 15
- (3) The professional board must, if the voluntary association complies with the requirements determined in terms of subsection (1), recognise that association and issue it with a certificate of recognition.
- (4) Any voluntary association aggrieved by the decision of the professional board may appeal to the council in the prescribed manner within 30 days of receipt of such a decision. 20
- (5) A certificate of recognition is valid for a period of five years from the date of issue.
- (6) A voluntary association must display its certificate of recognition in a prominent place at its head office. 25
- (7) The recognition of a voluntary association lapses—
- (a) if that association no longer complies with the requirements contemplated in subsection (1); or
 - (b) at the expiry of the period referred to in subsection (5).
- (8) A voluntary association must, at least three months prior to the expiry of its recognition, apply in the prescribed manner to the relevant professional board for the renewal thereof. 30
- (9) A voluntary association whose recognition has lapsed must return its certificate of recognition to the relevant professional board within 30 days from the date on which it is so directed in writing by that professional board. 35
- (10) The council must consult with—
- (a) all voluntary associations;
 - (b) any person;
 - (c) any body; or
 - (d) any industry, 40
- that may be affected by the identification of the type of work that may be performed by persons registered in any of the categories in respect of the profession in question, including work that falls within the scope of any other profession regulated under this Act.

Constitution of council 45

6. (1) The council consists of the following members appointed by the Minister, taking into account, among other things, the principles of transformation, transparency and representivity:
- (a) One professional for every professional board, each professional designated by the professional board in question; 50
 - (b) one person in the employment of the Department of Public Works;
 - (c) one person in the employment of the Department of Education, recommended by the Minister of Education;
 - (d) not more than two persons in the employment of state departments, within whose functional areas built environment professions are also practised, on the recommendations of the relevant Ministers; 55
 - (e) six community representatives, of whom at least three must have the expertise necessary for the proper carrying out of the functions of the council; and
 - (f) two persons designated by Higher Education South Africa.

(2) (a) Subject to section 7, a member of the council holds office for a period of four years, but is eligible for reappointment for one more term.

(b) At the end of the first term of the council 50 per cent of the members of the council may not be reappointed by the Minister.

(3) Not less than six months prior to the date of expiry of the term of office of the members of the council, the persons and bodies referred to in subsection (1) must inform the registrar in writing of the names of the persons recommended or designated by them, as the case may be, in terms of that subsection. 5

(4) If any professional board contemplated in subsection (1)(a) or the statutory body referred to in subsection (1)(f) fails to designate a professional or person, as the case may be, or fails to inform the registrar as is required in terms of subsection (3), the Minister must make the necessary designation, and any designation so made by the Minister must be regarded as having been properly made in terms of the appropriate provision of this section. 10

(5) The names of the members of the council and the date of commencement of their term of office must be published by the registrar in the *Gazette* as soon as possible after the members are appointed. 15

Disqualification, vacation of office, filling of vacancies and dissolution of council

7. (1) A person may not be appointed as a member of the council if that person—
- (a) is not a South African citizen or ordinarily resident in the Republic; 20
 - (b) is an unrehabilitated insolvent or has entered into a composition with the creditors of his or her estate;
 - (c) is, at the time of his or her appointment, or was, during the preceding 12 months—
 - (i) a member of a municipal council, a provincial legislature or Parliament; 25
 - or
 - (ii) a provincial or national office bearer or employee of any party, organisation or body of a political nature;
 - (d) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and was sentenced to imprisonment without the option of a fine, or, in the case of fraud, to a fine or imprisonment or both; 30
 - (e) subject to subsection (3), has been convicted of an offence in a foreign country, and was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment or both; 35
 - (f) has, as a result of disgraceful or improper conduct, been removed from an office of trust; or
 - (g) has, in terms of this Act or any of the Acts repealed by section 52, been found guilty of unprofessional conduct by the relevant professional board or the relevant professional council, as the case may be. 40
- (2) A member of the council must vacate his or her office if he or she—
- (a) becomes disqualified in terms of subsection (1);
 - (b) resigns by written notice addressed to the registrar;
 - (c) becomes disqualified under this Act from practicing his or her profession;
 - (d) becomes a patient as defined in section 1 of the Mental Health Care Act, 2002 (Act No. 17 of 2002); 45
 - (e) has been absent without leave of the chairperson of the council from more than two consecutive meetings of the council;
 - (f) is removed by the Minister in the public interest and for a just cause, after consultation with the person or body by whom the member was designated or appointed; 50
 - (g) is removed by the Minister in terms of subsection (8);
 - (h) is a member of the council and the Minister dissolves the council in terms of subsection (5);
 - (i) was appointed in terms of section 6(1)(b), (c) or (d) and ceases to be employed by the State; or 55
 - (j) was appointed in terms of section 6(1)(f) and ceases to be associated with Higher Education South Africa.
- (3) For the purposes of subsection (1)(e), the Minister must, in relation to the conviction, take cognisance of the prevailing circumstances in a foreign country. 60

(4) Every vacancy on the council arising from a circumstance referred to in subsection (2) and every vacancy caused by the death of a member, must be filled in the manner in which the member who vacates the office was required to be appointed, and any member so appointed holds office for the unexpired portion of the period for which the member who vacates the office was appointed. 5

(5) The Minister may dissolve the council if the council fails to comply with any of the provisions of this Act, and all the functions of the Council vest in the Minister until a new council is constituted.

(6) If the Minister reasonably believes that the council is failing to comply with the provisions of this Act, he or she may in writing request copies of the records, including minutes of meetings and financial statements, of the council in order to ascertain the extent of the council's compliance or non-compliance with the provisions of this Act, and the registrar must furnish copies of all such records within 15 days of the date of the Minister's request. 10

(7) The Minister may appoint any person to investigate the affairs of the council and may request that person to prepare a report in respect of such investigation for submission to the Minister. 15

(8) The Minister may terminate membership of a member of the council if the member—

- (a) fails to perform his or her functions as a member of the council; 20
- (b) obstructs or impedes any member of the council in the performance of his or her functions in term of this Act;
- (c) fails to declare a conflict of interest between his or her affairs and those of the council;
- (d) acts in a manner that is likely to bring the council or the built environment 25 professions into disrepute;
- (e) misuses or misappropriates council funds or resources; or
- (f) approves or engages in unauthorised or irregular expenditure or fruitless and wasteful expenditure.

Chairperson and vice-chairperson 30

8. (1) The Minister must appoint the chairperson and vice-chairperson of the council.

(2) The chairperson and vice-chairperson hold office during the term of office of the members of the council unless the chairperson or vice-chairperson resigns or ceases to be a member of the council.

(3) The vice-chairperson may, if the chairperson is absent or for any reason unable to act as chairperson, perform all the functions of the chairperson. 35

(4) If both the chairperson and the vice-chairperson are temporarily absent for any reason, the chairperson or the vice-chairperson may appoint another member of the council to act in their place.

(5) If both the chairperson and the vice-chairperson are absent from any meeting and have not appointed a member in terms of subsection (4), the members present must elect one of their number to preside at that meeting and the person so elected may, during that meeting and until the chairperson or the vice-chairperson resumes duty, perform all the functions of the chairperson. 40

(6) If both the chairperson and the vice-chairperson are absent or unable to perform their functions in terms of this Act, the members of the council must elect one of their number to act as chairperson until the chairperson or the vice-chairperson resumes duty or vacates office. 45

(7) A chairperson or a vice-chairperson may vacate office as chairperson or vice-chairperson, as the case may be, without terminating his or her membership of the council. 50

Meetings of council

9. (1) The first meeting of the council must be held at a time and place determined by the Minister, and thereafter meetings must be held at such times and at such places as the council may determine. 55

(2) The council must hold at least two meetings in a year, and may in addition hold such further meetings as the council may from time to time determine.

(3) (a) The chairperson may at any time convene a special meeting of the council, to be held on such a date and at such place as he or she may determine.

(b) The Chairperson must, upon a written request by the Minister or a written request signed by at least one third of the total number of members, convene a special meeting to be held, within thirty days after the date of receipt of the request, on such a date and at such a place as the chairperson may determine.

(c) The request referred to in paragraph (b) must clearly state the purpose of the special meeting. 5

Quorum and procedure at meetings

10. (1) The majority of the members of the council constitute a quorum at any meeting of the council.

(2) (a) Subject to subsection (1), a decision of the majority of members of the council present at any meeting constitutes a decision of the council. 10

(b) In the event of an equality of votes, the member presiding has a casting vote in addition to a deliberative vote.

(3) No decision taken by the council or act performed under authority of the council is invalid by reason only of an interim vacancy on the council or of the fact that a person who is not entitled to sit as a member of the council sat as a member at the time when the decision was taken or the act authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the council who were present at the time and entitled to sit as members. 15

Committees

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11. (1) The council may establish such number of committees as may be necessary or expedient, each consisting of so many persons appointed by the council as the council may determine but including at least one member of the council, who must be the chairperson of such a committee.

(2) The council must determine the terms of reference of the committees established under this section. 25

Appointment of registrar and staff

12. (1) Subject to subsection (4), the council must appoint a registrar and may delegate to the registrar the power to appoint such other persons as the registrar may deem necessary for carrying out the functions specified under this Act, and the council may also delegate to the registrar the power to dismiss such other persons. 30

(2) The registrar is the secretary of the council and of each professional board and must perform the functions—

(a) entrusted to him or her in terms of this Act; and

(b) delegated to him or her by the council, a professional board or a committee established in terms of section 11. 35

(3) The registrar may in writing authorise any member of his or her staff to perform any function entrusted to the registrar in terms of this Act, but is not divested of the performance of such function.

(4) The appointment and dismissal of the registrar is subject to the approval of the Minister. 40

Corporate finance and governance of council

13. (1) The funds of the council consist of any money received in terms of this Act, and all other monies accrued to the council from any other legal source, including—

(a) registration, examination, annual and other fees payable under this Act; 45

(b) donations, contributions or grants received from any person, institute or government; and

(c) interest on investments.

(2) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the council must use its funds to defray expenses incurred in connection with the performance of its functions and the functions of professional boards under this Act. 50

(3) The council may invest any unexpended portion of its funds and may establish such reserve funds and pay therein such amounts as it may deem necessary or expedient.

- (4) The council must, during each financial year, submit an estimated income and expenditure statement of the council for the following financial year to the professional boards for comment.
- (5) The Minister may, with the concurrence of the Minister responsible for finance—
- (a) advance or grant money to the council, from money appropriated by Parliament, to enable the council to perform its functions; and
 - (b) determine the conditions applicable to and repayment of the advance.
- (6) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the registrar must—
- (a) keep full and proper records of all money received and expenses incurred by, and of all assets, liabilities and other financial affairs of, the council;
 - (b) as soon as is practicable after the end of each financial year prepare annual financial statements in respect of the financial year in question in accordance with recognised accounting practices;
 - (c) ensure that the council has and maintains—
 - (i) effective, efficient and transparent systems of financial and risk management and internal control;
 - (ii) an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective; and
 - (iii) a system for properly evaluating all major capital projects prior to a final decision on the project;
 - (d) ensure the effective, efficient, economical and transparent use of the resources of the council;
 - (e) take effective and appropriate steps to—
 - (i) collect all money due to the council;
 - (ii) prevent unauthorised, irregular and fruitless and wasteful expenditure and losses resulting from criminal conduct; and
 - (iii) manage available working capital efficiently and economically;
 - (f) take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the registrar's responsibilities are considered and, when necessary, bring those considerations to the attention of the council;
 - (g) be responsible for the management, including the safeguarding and maintenance, of the assets and for the management of the liabilities of the council;
 - (h) settle all contractual obligations and pay all money owing by the council within 30 days of the date of receipt of an invoice or within a period agreed upon by the relevant creditor and the council;
 - (i) ensure that the expenditure of the council is in accordance with the decisions of the council;
 - (j) submit the financial statements within two months after the end of each financial year to an independent auditor for auditing; and
 - (k) submit within six months after the end of each financial year to the council for approval, and thereafter to the Minister within one month of such approval—
 - (i) an annual report on the activities of the council during each financial year;
 - (ii) the financial statements for that financial year after those statements have been audited; and
 - (iii) an independent auditor's report on those statements.
- (7) The council must ensure that the requirements of subsection (6) are met and fulfilled.
- (8) If the registrar is unable to comply with any of the responsibilities determined in subsection (6), he or she must promptly report the inability, together with reasons, to the council.
- (9) Any person who obstructs the registrar or the council in fulfilling any requirement of subsection (6) or (7) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

Minister may rectify defects

14. If anything required to be done under this Act in connection with the appointment of any member is omitted or not done within the time or in the manner required by this Act, the Minister may order all such steps to be taken as may be necessary to rectify the

omission or error or may validate anything done in an irregular manner or form, in order to give effect to the objects of this Act.

Establishment of professional boards

15. (1) The Minister may, after consultation with the council and by notice in the *Gazette*, establish a professional board with regard to any built environment profession in respect of which a register is kept in terms of this Act, or with regard to two or more such built environment professions. 5

(2) The Minister may, after consultation with the council and by notice in the *Gazette*, change or reconstitute the professional boards with regard to the built environment professions for which professional boards have been established, and establish other professional boards. 10

(3) The Minister must consult with any body which is or persons who are in the opinion of the council representative of the majority of persons to be affected by the change, reconstitution or establishment contemplated in subsection (2).

(4) The Minister may, after consultation with the council, make regulations relating to the constitution, functions and functioning of a professional board. 15

(5) The regulations contemplated in subsection (4) must at least provide—

- (a) for the appointment of not more than 20 members to a professional board by the Minister on the basis of nominations made by the professionals in the built environment profession in question; 20
- (b) for the appointment by the Minister of persons representing the community to a professional board, and must provide that those representatives may not be professionals registered with that professional board;
- (c) that not less than 20 per cent of the members of a professional board must be community representatives contemplated in paragraph (b), but with a minimum of one such representative for every professional board if 20 per cent is not mathematically possible; 25
- (d) for representation by relevant educational institutions;
- (e) for representation by state departments within whose functional areas the profession is practised; 30
- (f) for the appointment of one person versed in law, where appropriate;
- (g) the procedure to be followed for the nomination and appointment, as the case may be, of the members of a professional board;
- (h) the establishment by a professional board of such number of committees as it may deem necessary, each consisting of so many persons appointed by the professional board as it may determine, but including at least one member of the professional board, who must be the chairperson of such committee; 35
- (i) the delegation by a professional board of such of its functions to any person or any committee established as the board may determine, provided the board is not divested of any function so delegated; 40
- (j) the election of a chairperson and vice-chairperson of a professional board by the members of a professional board and the powers and functions of such a chairperson or vice-chairperson;
- (k) the term of office of the members of a professional board; and
- (l) the vacation of office by a member of and the filling of vacancies in a professional board. 45

Functions of professional boards

16. (1) A professional board must—

- (a) consult and liaise with other professional boards and authorities on matters affecting the professional board; 50
- (b) advise and make recommendations to the council on all matters affecting the education and training of persons in, and the manner of the exercise of the practices pursued in connection with, any profession falling within the ambit of the professional board;
- (c) assist the council with liaison in the field of education and training contemplated in paragraph (b), both in the Republic and elsewhere, and to promote the standards of such education and training in the Republic; 55
- (d) make recommendations to the council on any matter falling within the scope of this Act as it relates to any profession falling within the ambit of the

- professional board in order to support the universal norms and values of such profession, with greater emphasis on professional practice, democracy, transparency, equity, accessibility, social responsibility and community involvement;
- (e) make recommendations to the council on matters of public importance acquired by the professional board in the course of the performance of its functions under this Act; 5
- (f) maintain and enhance the dignity of the profession and the integrity of the persons practicing such profession; and
- (g) guide the profession and must protect the public interest. 10
- (2) A professional board may—
- (a) conduct accreditation visits to any educational or training institution that has a department, school or faculty of a profession falling under the ambit of a professional board;
- (b) subject to the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), the Higher Education Act, 1997 (Act No. 101 of 1997), the Skills Development Act, 1998 (Act No. 97 of 1998), and the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), either conditionally or unconditionally grant, refuse or withdraw accreditation with regard to all educational and training institutions and their educational curricula or training programmes with regard to the built environment profession falling within the ambit of the professional board; 15 20
- (c) consult with the Council on Higher Education established in terms of the Higher Education Act, 1997 (Act No. 101 of 1997), regarding matters relevant to education and training within the profession; 25
- (d) consult with the South African Qualifications Authority established under the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), to determine competency standards for the purposes of registration in the profession;
- (e) establish mechanisms for professionals to gain recognition of their qualifications and professional status in other countries; 30
- (f) remove any name from a register or, upon payment of a prescribed fee, restore a name thereto, or may suspend a professional from practicing his or her profession pending the institution of a formal disciplinary inquiry in terms of Chapter III; 35
- (g) appoint examiners and moderators, conduct examinations or evaluations, grant certificates and charge fees in respect of such examinations, evaluations or certificates as may be prescribed;
- (h) consider any matter affecting any profession falling within the ambit of the professional board and may make representations or may take such action in connection therewith as the professional board deems advisable; 40
- (i) upon application by any person recognise any qualification held by him or her, whether such qualification was obtained in the Republic or elsewhere, as being equal, either wholly or in part, to any prescribed qualification;
- (j) register a person recognised in terms of paragraph (i) upon compliance with such additional requirements as may be determined by the professional board, whereupon such person must, to the extent to which the qualification has been so recognised, be regarded to hold such prescribed qualification; and 45
- (k) perform such other functions as may be prescribed and, generally, do all such other things as the professional board deems necessary or expedient in order to achieve the objects of this Act in relation to the built environment profession falling within the ambit of the professional board. 50
- (3) (a) A decision by a professional board relating to a matter falling entirely within its ambit is not subject to ratification by the council.
- (b) The council must, for the purposes of paragraph (a), determine whether a matter falls entirely within the ambit of a professional board or not. 55

CHAPTER II

EDUCATION, TRAINING AND REGISTRATION OF PROFESSIONALS

Education and training

17. (1) Subject to the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995), the Higher Education Act, 1997 (Act No. 101 of 1997), the Skills Development Act, 1998 (Act No. 97 of 1998), and the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), no educational institution or training facility may offer or provide any education or training having as its object to qualify any person for the practising of any built environment profession to which the provisions of this Act apply, unless such education and training has been accredited by the professional board in question. 5 10

(2) Any person, educational institution or training facility wishing to offer education or training contemplated in subsection (1) must, before offering or providing such education or training, apply in writing to the professional board in question for the accreditation of such education or training, and must— 15

(a) furnish such particulars regarding the education or training as the professional board in question may require; and

(b) pay the prescribed accreditation fees and annual fees to remain accredited.

(3) The professional board concerned may grant or refuse any application lodged in terms of subsection (2) and, having granted such application, may impose such conditions and requirements as it may deem necessary subject to which the education or training in question may be provided at such educational institution or training facility. 20

(4) Any person who contravenes or fails to comply with any provision of this section is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months or both a fine and such imprisonment. 25

(5) A professional board is the education and training quality assurer for its built environment profession in terms of the South African Qualification Authority Act, 1995 (Act No. 58 of 1995).

Compulsory registration prerequisite to practise as professional

18. (1) No person may practise within the Republic any built environment profession, unless he or she is registered in terms of this Act. 30

(2) Every person desiring to be registered in terms of this Act must apply to the registrar in the prescribed manner.

(3) If the registrar is satisfied that the documents submitted in support of the application satisfy the requirements of this Act, the registrar may, upon payment by the applicant of the prescribed registration fee, register the applicant and issue a registration certificate authorising the applicant, subject to this Act or any other law, to practise the built environment profession in respect of which he or she applied for registration within the Republic. 35

(4) If the registrar is not satisfied that the applicant satisfies the prescribed requirements or that the qualification or other documents submitted in support of the application satisfy the requirements of this Act, the registrar must refuse to register the applicant, but must, if so required by the applicant, submit the application to the professional board in question for a decision. 40

(5) Any person who is not registered in terms of this Act, but who practises a built environment profession in contravention of this section, or who pretends to hold such registration, is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. 45

Keeping of registers

19. (1) The registrar must keep registers in respect of persons registered in terms of this Act, and must enter in the appropriate register the name, relevant contact details, qualifications, date of initial registration and such other particulars, including the registration category in which they hold registration and the name of their speciality, professional category or categories, if any, as the relevant professional board may determine, of every person whose application for registration in terms of section 18(2) has been granted. 50 55

- (2) The registrar must—
- (a) keep the registers correctly and in accordance with the provisions of this Act;
 - (b) remove from the registers the names of all registered persons who have died or whose names have to be removed in terms of this Act; and
 - (c) make the necessary alterations to the entries contemplated in subsection (1) in respect of registered persons. 5
- (3) Every registered person who changes his or her contact details must in writing notify the registrar thereof within 30 days after such change.
- (4) No qualification may be entered in the register unless the registrar is satisfied that the person claiming to possess such qualification is entitled thereto. 10
- (5) (a) The registrar must remove from the register any entry which is proven to the satisfaction of the professional board to have been made in error, through misrepresentation or in circumstances not authorised by this Act.
- (b) The registrar must enter in the register a record of the reason for every such removal, and the person in respect of whose entry such removal has been made, must be notified thereof by the registrar in the manner contemplated in section 20(2). 15
- (c) Any certificate issued in respect of the registration in question must be regarded as having been cancelled from the date on which notice has been given in terms of paragraph (b).

Removal of name from, and restoration of name to, register 20

- 20.** (1) The registrar must, if directed by a professional board or committee empowered to do so, or may, if acting on the established policies of the professional board, remove from the register the name of any person—
- (a) who has requested that his or her name be removed from the register, in which case such person may be required to lodge with the registrar an affidavit to the effect that no disciplinary or criminal proceedings are pending against him or her, or no disciplinary or criminal proceedings are being or are likely to be taken against him or her; 25
 - (b) whose name has been removed from the register, record or roll of any university from which that person received the qualification by virtue of the holding whereof he or she was registered; 30
 - (c) who has been found guilty of unprofessional conduct and on whom a penalty of striking off the register has been imposed; or
 - (d) who has been registered in error or through fraud or misrepresentation.
- (2) Notice of the removal in terms of subsection (1) of his or her name from the register must be given by the registrar to the person concerned by way of certified mail, facsimile or electronic transmission addressed to such person at the address appearing in respect of him or her in the register. 35
- (3) As from the date on which the notice has been given in terms of subsection (2)—
- (a) any registration certificate issued in terms of this Act to the person concerned must be regarded as having been cancelled; and 40
 - (b) such person must cease to practise the built environment profession in respect of which he or she was registered or to perform any act which he or she, in his or her capacity as a registered person, was entitled to perform, until such time as his or her name or the entry removed from the register in terms of section 19(5), as the case may be, is restored to the register. 45
- (4) (a) If it appears to the judge concerned from documents presented to him or her in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002), or if it is brought to his or her notice in any other manner, that the person to whom the document relates is a person registered under this Act, the judge must, if the said person is declared a mentally ill person in terms of the Mental Health Care Act, 2002, direct that a copy of the order declaring such person a mentally ill person be transmitted to the registrar. 50
- (b) The registrar must, upon receipt of the copy of the order, remove the name of the person concerned from the register.
- (5) The name of a person whose name has in terms of this section been removed from the register or an entry removed from the register in terms of section 19(5), may be restored to the register by the registrar upon the person concerned—
- (a) applying on the prescribed form for such restoration;
 - (b) paying any fee prescribed in respect of such restoration;

- (c) in the case where his or her name has been removed from the register in terms of subsection (4), submitting proof to the satisfaction of the professional board of his or her discharge in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002), from the institution in which he or she had been detained;
- (d) paying any annual fee which was not paid and payment of such additional fee as may be prescribed; and 5
- (e) complying with such other requirements as the relevant professional board may determine.

Suspension of professionals and revocation of such suspension

- 21.** (1) A relevant professional board or a committee to whom the function has been delegated may authorise the registrar to suspend the registration of any person— 10
- (a) who has failed to pay the prescribed annual fee on the date when it became due for payment;
 - (b) who has been found guilty of unprofessional conduct and on whom a penalty of suspension has been imposed by the disciplinary committee; 15
 - (c) who has failed to comply with the prescribed requirements in respect of continuing professional development; or
 - (d) who, on the basis of a complaint, charge or allegation lodged with the council or information available at the disposal of council, is posing an imminent threat or danger to the public in terms of his or her professional practice. 20
- (2) The registrar must issue the notice of suspension and send it to the person contemplated in subsection (1) by way of certified mail, facsimile or electronic transmission to the address appearing in respect of such person in the register.
- (3) As from the date on which the notice referred to in subsection (2) has been issued— 25
- (a) any registration certificate issued in terms of this Act to the person concerned must be regarded as having been suspended; and
 - (b) such person must immediately cease to practise the built environment profession in respect of which he or she is registered or to perform any act which he or she may perform in his or her capacity as a registered person, until such time as the suspension of his or her registration is revoked. 30
- (2) The suspension of any person in terms of subsection (1) must be revoked by the registrar upon—
- (a) payment of any annual fee which was not paid and payment of such other fees as may be prescribed; 35
 - (b) expiry of the suspension period;
 - (c) compliance with the prescribed requirements in respect of continuing professional development; or
 - (d) compliance with such other requirements or conditions as the relevant professional board may determine. 40

Custody and publication of registers

22. The registers must be kept at the office of the council and the registrar must, at intervals determined by the council and according to the instructions and on the authority of the council, cause copies of the registers or of supplementary lists showing all alterations, additions, revisions and deletions made since the last publication of the complete registers, to be printed and published or to be made available in electronic or any other appropriate format approved by the council. 45

Register as proof of registration

23. (1) A copy of the last published issue of a register or any supplementary list purported to have been printed and published on the authority of the council is *prima facie* proof, in all legal proceedings, of the fact therein recorded, and the absence of the name of any person from such copy is *prima facie* proof, in the absence of evidence to the contrary that raises reasonable doubt, that such person is not registered in terms of this Act: Provided that in the case of any person whose name— 50

- (a) does not appear in such copy, or whose name has been added to the register after the date of the last published issue thereof, a certified copy under the 55

hand of the registrar of the entry of the name of such person in the register, is proof that such person is registered under this Act; or

- (b) has been removed from the register since the date of the last published issue thereof and has not been restored thereto, a certificate under the hand of the registrar that the name of such person has been removed from the register is proof that such person is not registered in terms of this Act. 5

(2) A certificate of registration is evidence of registration for a period of one year only and thereafter an annual practising certificate, which must be issued upon payment of the prescribed annual fee and the submission of such information as may be required by the council to enable it to keep accurate statistics on human resources in the built environment field, must be regarded as proof of registration. 10

Issue of duplicate registration, certificate of status, extract from register or certificate by registrar

24. (1) If the registrar is satisfied—

- (a) on proof submitted by the registered person concerned, that a registration certificate has been damaged or destroyed; or 15
 (b) by virtue of an affidavit submitted by the registered person concerned, that a registration certificate has been lost,

the registrar may issue a duplicate registration certificate to that person upon payment of the prescribed fee. 20

(2) The registrar may, upon payment of the prescribed fee and after the submission of an affidavit by a registered person that no criminal or disciplinary proceedings are pending against him or her, issue to that person a certificate of status containing particulars relating to—

- (a) that person's registration under this Act; 25
 (b) whether or not the person is disqualified in part or totally from practising his or her profession;
 (c) whether or not any steps pertaining to unprofessional conduct are pending against the person concerned at the time of issuing the certificate; and
 (d) whether or not the person concerned was, in the past, found guilty of any unprofessional conduct, and if so— 30
 (i) the date of such finding;
 (ii) the nature of the charges; and
 (iii) the sanction imposed.

(3) The registrar may issue a certified extract from the register or a certificate under his or her hand to any registered person upon payment of the prescribed fee. 35

(4) The registrar may issue a certificate with endorsements of such conditions as may be imposed by the professional board concerned.

Qualification prescribed for registration

25. The Minister may, after consultation with the council, prescribe the qualifications obtained by virtue of examinations conducted by an accredited educational institution or examining authority in the Republic, which, when held singly or conjointly with any other qualification, entitle the holder thereof to registration in a registration category in terms of this Act if he or she has, before or in connection with or after the acquisition of the qualification in question, complied with such conditions or such requirements as may be prescribed. 40 45

Registration of persons who hold qualifications not prescribed for registration

26. (1) (a) The Minister may, after consultation with the council, by regulation provide that any person who holds a qualification contemplated in paragraph (b) may be registered by the relevant professional board in terms of such a regulation in the applicable prescribed registration category. 50

(b) The council may for the purposes of registration contemplated in paragraph (a) accept qualifications that indicate a satisfactory standard of professional education and training.

(2) A professional board may require a person contemplated in subsection (1) and who applies for registration in terms of this section, to pass to the satisfaction of the professional board, on a date and at a place determined by the professional board, an 55

examination or evaluation contemplated in subsection (3) before persons appointed by the professional board, for the purpose of determining whether such person possesses adequate professional knowledge, skills and competence and whether he or she is proficient in any of the official languages of the Republic.

(3) The council may determine— 5

- (a) the nature of the examination or evaluation which must be conducted for the purposes of subsection (2), the requirements for admission and any other matter relating to such examination or evaluation including the number of attempts; and
- (b) the fees payable by persons who present themselves for such examination or evaluation. 10

(4) The Minister may, after consultation with the council and the relevant professional board, make regulations relating to the imposition of restrictions on any person registered in terms of subsection (1), subject to which such person may practise the profession in question. 15

Compliance with certain conditions relating to continuing professional development as prerequisite for continued registration

27. The council may, after consultation with every professional board, make rules which determine—

- (a) the conditions relating to continuing professional development; 20
- (b) the nature and extent of continuing professional development to be undertaken by persons registered in terms of this Act;
- (c) the criteria for recognition by the professional boards of continuing professional development and of providers offering such activities;
- (d) the recognition of professionals who offer opportunities for practical training towards the development of graduates and potential graduates; and 25
- (e) the offences in respect of, and penalties for, non-compliance with the requirements prescribed under this section.

Registration of certain persons for education and training purposes

28. (1) For the purposes of promoting education or training for practising of a built environment profession in respect of which registration in terms of this Act is a requirement, the relevant professional board may, notwithstanding anything to the contrary in this Act, register any person not permanently resident within the Republic to practice such profession for such period as the council may determine. 30

(2) A person registered in terms of subsection (1) may give demonstrations at an educational and training institution accredited by the council of techniques in respect of such profession. 35

Accredited education and training institutions to furnish professional boards with certain particulars

29. (1) Every education and training institution at which a qualification may be obtained which entitles the holder thereof to registration under this Act, must furnish the relevant professional board at the board's request with full particulars as to— 40

- (a) the minimum age and proof of compliance with set standards of education and training required of candidates to acquire such qualification;
- (b) proof of compliance with the set course of study, training and examinations or assessment methodologies required of a candidate before such qualification is granted; 45
- (c) the results of any examinations conducted by it; and
- (d) any other particulars relating to the education and training offered by such institution as the professional board may require for the accreditation of any qualification offered by that institution for the purposes of registration in terms of this Act. 50

(2) If any institution contemplated in subsection (1) fails or refuses to furnish any particulars requested by the professional board under that subsection or it appears to the professional board that a provision of this Act is not being properly complied with by that institution and that such improper compliance is having or may have an adverse effect on the standards of education and training maintained at that institution, the 55

professional board concerned may, by notice in the *Gazette*, suspend accreditation of such education and training institution until such time as that institution complies with the conditions and terms determined by the professional board.

(3) A professional board may, upon representations made by the affected education and training institution that satisfactory provision has been made for complying with the requirement of this Act by the said institution, reinstate the accreditation of that institution by notice in the *Gazette*. 5

(4) A qualification specified in a notice issued under subsection (2) which has been granted by an educational and training institution to which such notice relates between the date specified in that notice and the repeal of that notice in terms of subsection (3), does not entitle the holder thereof to registration under this Act. 10

(5) The relevant professional board may appoint a person to be present whenever tests or examinations are being conducted by any educational and training institution to monitor academic progress made by candidates at such institution and to report to the relevant professional board thereon. 15

Definition of scope of built environment professions

30. (1) The Minister may, after consultation with the council, the relevant professional board and any relevant voluntary association, by regulation define the scope of any built environment profession that may be registered in terms of this Act by specifying the acts which, for the purposes of the application of this Act, must be regarded as acts pertaining to that profession: Provided that such regulations may not be made unless any professional board established in terms of section 15 in respect of any profession which may in the opinion of the Minister be affected by such regulations, has been given an opportunity of submitting, through the council, representations as to the definition of the scope of the profession in question: Provided further that if there is a difference of opinion between the council and such professional board as to the definition of the scope of the profession in question, the council must mention this fact in its recommendation to the Minister. 20 25

(2) The Minister may, after consultation with the council, the relevant professional board and any relevant voluntary association, make regulations regarding the registration of persons not registered in terms of any law repealed by section 52 who were immediately before this Act took effect engaged in the practice of any built environment profession in respect of which a professional board has been established. 30

(3) The regulations contemplated in subsection (2) must at least provide— 35

- (a) that a professional board established under section 15 in respect of any built environment profession may, subject to such restrictions in respect of such professional activities as the board may determine, register any person who— 35
 - (i) was engaged in the practice of such profession in the Republic for a specified period immediately prior to the date contemplated in subparagraph (iv); 40
 - (ii) is dependent, wholly or mainly, for his or her livelihood on the practice of such profession;
 - (iii) submits a certificate to the professional board stating that he or she is of good character; and
 - (iv) submits to the professional board an application in the prescribed form containing proof of the facts referred in subparagraphs (i) and (ii), within a specified period, or such longer period as the professional board may allow, after the date on which such professional board was established and the scope of such built environment profession was defined in terms of subsection (1); 45 50
- (b) for a professional board to conduct an oral or a practical examination for a person contemplated in paragraph (a) in order to determine the restrictions contemplated in that paragraph;
- (c) that any person registered in respect of any built environment profession to only practise that profession subject to— 55
 - (i) the restrictions contemplated in paragraph (a) in respect of his or her professional activities; and
 - (ii) the use of such name, title and description in respect of his or her profession as the professional board may determine; and
- (d) for a professional board to allow a person contemplated in paragraph (a) to sit for an examination and, if such person passes such examination to the 60

satisfaction of the professional board, to exempt him or her from restrictions imposed in respect of him or her in terms of that paragraph.

Registration prerequisite for practising profession in respect of which professional board has been established

31. (1) Subject to section 30, no person may practise within the Republic any built environment profession the scope of which has been defined by the Minister in terms of section 30(1), unless he or she is registered in terms of this Act in respect of such profession. 5

(2) Any person who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. 10

Registration and use of additional qualifications, registration of specialists, persons in professional categories and additional professional categories

32. (1) A professional board must on application, subject to subsection (2) and upon payment of a prescribed fee— 15

(a) enter into the relevant register any additional qualification in respect of the applicant;

(b) register the applicant as a specialist; or

(c) register the applicant in a professional category or additional professional category. 20

(2) Only such additional and specialist qualifications, professional categories or additional professional categories as may be prescribed, is registrable under this section.

(3) No registered person may take, use or publish in any way whatsoever any name, title, description or symbol indicating or calculated to lead people to infer that he or she holds any professional qualification which is not entered in the register in respect of his or her name, nor shall any registered person practise as a specialist or hold him or herself out to be a specialist unless he or she is registered as such specialist. 25

Prohibition of performance by unregistered persons of certain acts pertaining to built environment professions registrable in terms of this Act

33. No person may perform any prescribed act pertaining to any built environment profession unless he or she— 30

(a) is registered in terms of this Act in respect of such profession;

(b) is registered in terms of this Act in respect of any other built environment profession to which such act also pertains; or

(c) practices a built environment profession in respect of which the registrar in terms of this Act keeps a register and such act is an act that pertains to such profession. 35

Pretending to be registered person or to be holder of registrable qualification

34. Any person who is not registered in respect of any built environment profession and who— 40

(a) pretends to be registered in respect of that profession; or

(b) uses any name, title, description or symbol indicating, or calculated to lead people to infer, that he or she is the holder of any qualification which by regulation under this Act is recognised by the relevant professional board as acceptable for registration in respect of such profession while he or she is not the holder of the qualification, 45

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and such imprisonment.

CHAPTER III

UNPROFESSIONAL CONDUCT BY REGISTERED PERSON

Investigation of charge of unprofessional conduct

35. (1) A professional board must refer any matter brought against a registered person to a committee (hereafter referred to as an investigating committee) if— 5
- (a) the professional board has reasonable grounds to suspect that the registered person has committed an act which may render him or her guilty of unprofessional conduct; or
 - (b) a complaint, charge or allegation of unprofessional conduct has been brought against a registered person by any person. 10
- (2) At the request of the professional board, the investigating committee must—
- (a) investigate the matter; and
 - (b) obtain evidence to determine whether or not in its opinion the registered person concerned may be charged and, if so, recommend to the professional board the charge or charges that may be preferred against that registered person. 15
- (3) An investigating committee may not question the registered person concerned unless the investigating committee informs that registered person that he or she—
- (a) has the right to be assisted or represented by another person; and
 - (b) is not obliged to make any statement and that any statement so made may be used in evidence against the registered person. 20
- (4) The investigating committee must, after the conclusion of the investigation, submit a report making its recommendations to the professional board regarding any matter referred to it in terms of this section.

Charge of unprofessional conduct 25

36. (1) The professional board must, after considering a report of the investigating committee in terms of section 35(2)(b) and (4), charge a registered person with unprofessional conduct if sufficient grounds exist for a charge to be preferred against such a registered person.
- (2) The professional board must furnish a charge sheet to the registered person concerned by hand or registered mail. 30
- (3) A charge sheet must inform the registered person charged—
- (a) of the details and nature of the charge;
 - (b) that he or she must, in writing, admit or deny the charge;
 - (c) that he or she may, together with the admission or denial, submit a written explanation regarding the unprofessional conduct with which he or she is charged; and 35
 - (d) of the period, which must be reasonable, within which his or her plea in terms of paragraph (b) must be submitted to the council.
- (4) (a) If a registered person charged admits that he or she is guilty of the charge, he or she is considered to have been found guilty of unprofessional conduct as charged, after he or she has explained his or her conduct.
- (b) The professional board may, subject to section 39(2), impose any one or more of the penalties contemplated in section 39(3) on a registered person who has admitted guilt in terms of paragraph (a). 45
- (5) The acquittal or the conviction of a registered person by a court of law on a criminal charge is not a bar to proceedings against him or her under this Act on a charge of unprofessional conduct, even if the facts stated in the charge of unprofessional conduct would, if proved, constitute the offence stated in the criminal charge on which he or she was acquitted or convicted or any other offence of which he or she might have been acquitted or convicted at his or her trial on the criminal charge. 50

Appointment of disciplinary tribunal

37. (1) The relevant professional board must appoint a disciplinary tribunal to hear a charge of unprofessional conduct if the person charged— 55
- (a) denies the charge; or
 - (b) fails to comply with section 36(3)(b).

- (2) The disciplinary tribunal must consist of at least—
- (a) a person who specialises in the professional field concerning the charge;
 - (b) a professional who has appropriate experience; and
 - (c) a person qualified in law and who has appropriate experience.

Disciplinary hearing

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38. (1) The disciplinary hearing must be conducted by the disciplinary tribunal.

(2) The disciplinary tribunal may, for the purposes of this section, appoint a person to assist it in the performance of its functions.

(3) (a) The disciplinary tribunal may, for the purposes of a hearing, subpoena any person— 10

(i) who in its opinion may be able to give material information concerning the subject of the hearing; or

(ii) who it suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, 15

to appear before the disciplinary tribunal at the time and place specified in the subpoena, to be questioned or to produce a book, document or object.

(b) A subpoena issued in terms of paragraph (a) must—

(i) be in the prescribed form;

(ii) be signed by the chairperson of the disciplinary tribunal or, in his or her absence, any member of the disciplinary tribunal; and 20

(iii) be served on the registered person concerned personally or by sending it by registered mail.

(4) The disciplinary tribunal may retain a book, document or object produced in terms of subsection (3) for the duration of the hearing. 25

(5) The chairperson of the disciplinary tribunal may call upon and administer an oath to, or take an affirmation from, any witness at the hearing who was subpoenaed in terms of subsection (3).

(6) At a hearing the registered person charged—

(a) (i) may personally be present at the hearing of the proceedings; 30

(ii) may be assisted or represented by another person in conducting the proceedings;

(iii) has the right to be heard;

(iv) may call witnesses; 35

(v) may cross-examine any person called as a witness in support of the charge; and

(vi) may have access to documents produced in evidence;

(b) (i) may admit at any time before conviction that he or she is guilty of the charge despite the fact that he or she denied the charge or failed to react in terms of section 36(3)(b) or (c); and 40

(ii) may, in the case where he or she makes an admission in terms of subparagraph (i), be deemed to be guilty of unprofessional conduct as charged. 45

(7) The person referred to in subsection (2) may during a hearing—

(a) lead evidence and advance arguments in support of the charge and cross-examine witnesses;

(b) question any person who was subpoenaed in terms of subsection (3); and

(c) call anyone to give evidence or to produce any book, document or object in his or her possession or custody or under his or her control which the person referred to in subsection (2) suspects or believes to have a bearing on the subject of the hearing. 50

(8) (a) A witness who has been subpoenaed may not—

(i) without sufficient cause, fail to attend the hearing at the time and place specified in the subpoena; 55

(ii) refuse to be sworn in or to be affirmed as a witness;

(iii) without sufficient cause, fail to answer fully and satisfactorily to the best of his or her knowledge to all questions lawfully put to him or her; or

(iv) fail to produce any book, document or object in his or her possession or custody or under his or her control which he or she has been required to produce. 60

(b) A witness who has been subpoenaed must remain in attendance until excused by the chairperson of the disciplinary tribunal from further attendance.

(c) A witness who has been subpoenaed may request that the names of the members of the disciplinary tribunal be made available to him or her.

(d) The law relating to privilege, as applicable to a witness subpoenaed to give evidence or to produce a book, document or object in a civil trial before a court of law may, with the changes required by the context, apply in relation to the examination of, or the production of any book, document or object to the disciplinary tribunal by, any person called in terms of this section as a witness. 5

(e) A witness, having been sworn in or having been affirmed as a witness, may not give a false statement on any matter, knowing that answer or statement to be false. 10

(f) A person may not prevent another person from complying with a subpoena or from giving evidence or producing a book, document or object which he or she is in terms of this section required to give or produce.

(9) The record of evidence which has a bearing on the charge before the disciplinary tribunal, and which was presented before any commission which investigated an event or conduct is admissible without further evidence being led if— 15

(a) the record is accompanied by a certificate from the chairperson; and

(b) the certificate certifies that the investigation was lawful, reasonable and procedurally fair. 20

(10) If the unprofessional conduct with which the registered person is charged amounts to an offence of which he or she has been convicted by a court of law, a certified copy of the record of his or her trial and conviction by that court is, on the identification of the registered person as the person referred to in the record, sufficient proof of the commission by him or her of that offence, unless the conviction has been set aside by a superior court. 25

Proceedings after hearing

39. (1) After the conclusion of the hearing the disciplinary tribunal must, within 30 days—

(a) decide whether or not the registered person charged is guilty of unprofessional conduct; 30

(b) if the disciplinary tribunal finds that the registered person charged is guilty of unprofessional conduct, take cognisance of any aggravating or mitigating circumstances;

(c) inform the registered person charged and the council of the finding; and 35

(d) inform the registered person of his or her right of appeal in terms of section 40.

(2) A registered person found guilty of improper conduct in terms of this section may—

(a) address the disciplinary tribunal in mitigation of sentence; and

(b) call witnesses to give evidence on his or her behalf in mitigation of the sentence. 40

(3) If the registered person charged is found guilty of unprofessional conduct, or if he or she admits that he or she is guilty of the charge, the disciplinary tribunal must impose any one or more of the following penalties:

(a) A caution or a reprimand or a reprimand and a caution; 45

(b) suspension for a specified period from practicing or performing acts specially pertaining to his or her profession;

(c) striking off his or her name from the register;

(d) any prescribed fine;

(e) a compulsory period of professional community service determined by the disciplinary committee; or 50

(f) the payment of the costs of the disciplinary proceedings or a restitution to complainant or both.

(4) At the conclusion of the hearing the disciplinary tribunal must notify the relevant professional board of its finding. 55

(5) The professional board must publish the finding and the penalty imposed in terms of subsection (3) in the *Gazette*.

(6) The professional board must give effect to the decision of the disciplinary tribunal.

Appeal

40. (1) (a) A registered person found guilty of unprofessional conduct may appeal to the council against a finding of the disciplinary tribunal or against the sentence, or both.
- (b) The appeal must be lodged within 30 days after the disciplinary tribunal has informed the registered person of its decision. 5
- (2) The appellant must submit a copy of the appeal against the decision of the professional board and any documents or records supporting such appeal to that professional board and furnish proof of such submission for the information of the council.
- (3) The council must appoint an appeal committee consisting of— 10
- (a) a professional who has appropriate experience;
 - (b) a person qualified in law and who has appropriate experience; and
 - (c) a person who specialises in the professional field concerning the appeal.
- (4) The appeal committee may—
- (a) dismiss the appeal against the decision of the disciplinary tribunal and confirm 15 the finding or sentence or both; or
 - (b) uphold the appeal against the decision of the disciplinary tribunal wholly or in part and set aside or vary the finding or sentence or both.
- (5) The appeal committee must decide an appeal within 60 days from the date on which the appeal was lodged, and inform the appellant and the professional board in 20 question accordingly.
- (6) If a registered person found guilty of unprofessional conduct lodges an appeal in terms of subsection (1)—
- (a) the decision of the disciplinary tribunal under section 39(3); or
 - (b) the publication in terms of section 39(5), 25
- may not be put into effect before the council has decided the appeal.

Effect of suspension or striking-off from register

41. Every person who has been suspended or whose name was struck-off from the register in terms of section 39(3) shall be disqualified from practising his or her profession and his or her registration certificate shall be deemed to be cancelled until the 30 period of suspension has expired or until his or her name is restored to the register by the professional board upon application by the person concerned after at least a period of five years from date of striking-off from the register of his or her name.

Penalty for false evidence

42. Any person who gives false evidence under oath or affirmation at any disciplinary 35 inquiry held under this Chapter knowing such evidence to be false is guilty of an offence and liable on conviction to the penalties prescribed by law for the offence of perjury.

Council to develop code of conduct

43. The council must, in consultation with a professional board, develop a code of 40 conduct for registered persons specifying the acts or omissions in respect of which a professional board may institute a disciplinary inquiry under this Chapter: Provided that the powers of a professional board to institute a disciplinary inquiry into and deal with any complaint, charge or allegation relating to a built environment profession under this Chapter, shall not be limited to the acts or omissions so specified in the code of conduct.

CHAPTER IV 45

GENERAL AND SUPPLEMENTARY PROVISIONS

Exemption from operation of provisions of this Act

44. (1) The Minister may, after consultation with council, by notice in the *Gazette* 50 exempt any juristic person or class of juristic persons specified in the notice, either generally or subject to such conditions as may be specified in the notice, from the operation of any of the provisions of this Act, so as to enable such juristic person or class

of juristic persons to practise a profession in respect of which registration in terms of this Act is a prerequisite for practising such profession.

(2) Any reference in this Act or any other law to a person registered in terms of this Act to practise a profession referred to in subsection (1) or to a partner of or a partnership or to a director or shareholder of a company or a close corporation in relation to such registered person, must be regarded to include a reference to a juristic person or class of juristic persons referred to in subsection (1) or to a member of such juristic person or class of juristic persons, as the case may be, unless the context otherwise indicates. 5

Penalty for false representation inducing registration, for false entries in register and for impersonation 10

45. Any person who—

- (a) procures or attempts to procure for himself or herself or for any other person registered under this Act, any certificate, order or prescript referred to in this Act by means of a false representation, whether verbally or in writing, or aids or abets any person in so doing; 15
 - (b) makes or causes to be made any unauthorised entry or alteration in or removal from a register or certified copy thereof or extract therefrom or on any certificate issued under this Act;
 - (c) willfully destroys or damages or renders illegible or causes to be destroyed, damaged or rendered illegible any entry in the register or, without the permission of the holder thereof, any certificate issued under this Act; 20
 - (d) forges or, knowing it to be forged, utters any document purporting to be a certificate issued under this Act; or
 - (e) pretends to be a person registered in terms of this Act, 25
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment.

Limitations in respect of unregistered persons

46. (1) No remuneration is recoverable in respect of any act specially pertaining to the profession of a registered person when performed by a person who is not registered under this Act to perform such act. 30

(2) No person other than a registered person holding the necessary qualifications may hold any appointment to any establishment, institution, body, organisation or association, whether public or private, if such appointment involves the performance of any act which an unregistered person, in terms of the provisions of this Act, may not perform: Provided that nothing in this subsection must be construed as prohibiting the education and training of prospective built environment professionals under supervision of a registered professional, or the employment in any government department or similar institution of any person undergoing training with a view to registration in terms of this Act in respect of any built environment profession, under the supervision of a registered person. 40

Investigation of matters relating to education and training of certain persons

47. (1) Notwithstanding anything to the contrary contained in any law, any person who has been authorised by a professional board in writing to investigate any matter relating to the education and training of any person who is undergoing such education and training for the purposes of qualifying for the practising of any profession to which the provisions of this Act apply, may, for the purposes of making such investigation, enter any institution or premises utilised in the education and training of any such person. 45

(2) Any person who prevents any person authorised in terms of subsection (1) from entering any institution or premises referred to in that subsection, or who hinders him or her in the making therein or thereon of any investigation contemplated in that subsection, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment. 50

Regulations

- 48.** (1) The Minister may, after consultation with the council, make regulations regarding—
- (a) (i) the registration by the council of candidates in registrable professions enrolled at any accredited educational institution, the fees payable in respect of such registration and the removal by the council from the register in question of the names of such candidates so registered; 5
 - (ii) the standards of general education required of such candidates as a condition precedent to such registration; 10
 - (iii) the duration of the curricula to be followed by such candidates at such educational institution;
 - (iv) the minimum requirements of the curricula and the standards of education, training and examinations to qualify for registration in terms of this Act, which must be maintained at every educational institution offering education and training in any such profession, in order to secure accreditation and recognition under this Act of the qualification in question at such educational institution; 15
 - (v) the nature and duration of the training to be undergone by any person who has obtained a prescribed qualification for registration under this Act, but who is not yet registered as a professional, before he or she may be registered as such; 20
 - (b) the conditions under which any registered person may practice his or her profession;
 - (c) the names and titles which may not be used by unregistered person; 25
 - (d) government departments and other institutions at which training of candidates and other professionals may be undertaken and the accreditation of such departments or institutions for such training;
 - (e) (i) the registration in terms of section 32 of the specialties or professional categories or additional professional categories of the built environment professions; 30
 - (ii) the requirements to be satisfied, including education and training and the experience to be obtained, the nature and duration of the education and training and experience to be undergone and the qualifications to be held by persons before they may be registered as specialist or in any professional category or additional professional category; 35
 - (iii) conditions in respect of the practicing of a specialist profession or a profession of a person whose professional category or additional professional category has been registered, including conditions restricting the practice of such a specialist profession or a profession of any such person to the exclusive practice of such specialist person or a person registered in a professional category or additional professional category; 40
 - (f) (i) the nomination of members of a professional board required to be appointed in terms of section 15; 45
 - (ii) the requirements for a valid nomination of a candidate for appointment by the Minister as a member of a professional board;
 - (g) (i) the manner in which complaints, charges or allegations brought against a registered person must be lodged; 50
 - (ii) the method of summoning a respondent and the penalties for failure or refusal on the part of any such respondent to respond to or attend or for obstructing or interrupting any part of the disciplinary inquiry proceedings; 55
 - (iii) the continuation of a disciplinary inquiry, after a plea has been lodged, by the disciplinary committee, should one or more members of the disciplinary inquiry be unable to continue to serve: Provided that not less than three of the original members of the committee are available to continue with the disciplinary inquiry; 60
 - (iv) the procedure to be followed to lodge an appeal with a disciplinary appeal committee;
 - (v) any other matter relating to the conduct of such disciplinary inquiry;
 - (h) any matter which in terms of this Act is required to be prescribed by regulation; and 65

- (i) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) The Minister may, after consultation with the council, amend or repeal any regulations or rule made in terms of this Act. 5
- (3) Any regulation made under this section may prescribe a penalty for any contravention thereof or failure to comply therewith.
- (4) (a) Before the Minister makes any regulation under this section, he or she must publish a draft of the proposed regulation in the *Gazette* together with a notice calling on interested persons to comment, in writing, within a period stated in the notice of not less than 30 days from the date of publication of the notice. 10
- (b) If the Minister alters the draft regulations, as a result of any comment, he or she need not publish those alterations before making the regulations.
- (5) The Minister may, on recommendation of the council and if the public interest requires the immediate publication of a regulation, publish that regulation without consultation contemplated in subsections (1) and (2). 15

Rules

- 49.** (1) The council may make rules and adopt policies relating to—
- (a) the conduct of the business and the procedure at meetings of the council, professional boards and their committees and the manner in which minutes of such meetings must be kept; 20
- (b) the manner in which—
- (i) contracts must be entered into on behalf of the council;
- (ii) the accounts of the council must be kept; and
- (iii) money accruing to council must be disposed of; 25
- (c) the professional fees and allowances which may be paid to members of the council or to members of professional boards or to members of committees and subcommittees of the council or professional boards and other persons who render a service to the council and professional boards;
- (d) any fees payable in terms of this Act, including— 30
- (i) registration fees;
- (ii) annual fees;
- (iii) fees payable for restoration of—
- (aa) a name to a register from which it was removed, and such fees may vary according to the reason for the removal thereof and the period for which it was so removed; and 35
- (bb) a person as a specialist or in a professional category or additional professional category;
- (iv) fees payable for the issuing of certificates;
- (v) fees payable for examinations conducted by or on behalf of professional boards; and 40
- (vi) fees payable for accreditation of education and training institutions and activities for continuing professional development; and
- (e) the qualifications which may be registered as additional qualifications in terms of section 32. 45
- (2) The council must, not less than one month before any rule is made or policy adopted in terms of this Act, cause the text of such rule or policy to be published in the *Gazette* together with a notice declaring the council's intention to make such rule or adopt such policy and inviting interested persons to submit to the council any substantiated comments thereon or any representations they may wish to make in regard thereto. 50

Annual fees payable by registered persons

- 50.** (1) (a) The council may, on the recommendations of a professional board, by notice in the *Gazette* prescribe a fee to be paid annually to the council by registered persons. 55
- (b) The council may differentiate between persons according to whether they have been registered before or after a date specified in the notice and may vary such fee according to the profession and registration category in which the registered person holds registration and whether it is paid before or after a specified date.

(2) If any person liable to pay any annual fee prescribed in terms of subsection (1) fails or refuses to pay such fee within the period specified in the notice in question, the council may recover such fee by action in a competent court.

(3) If a person's name has been removed from the register in terms of section 20, it shall be a condition precedent for the restoration of his or her name to the register that he or she pays the outstanding annual fee and such restoration fees as may be prescribed. 5

(4) A professional board may by resolution exempt for an indefinite or a definite period any registered person specified in the resolution from payment of any annual fee prescribed in terms of subsection (1).

Transitional provisions 10

51. (1) For the purposes of this section—

(a) **“commencement date”** means the date on which this Act or a section or a Chapter of this Act comes into operation; and

(b) **“effective date”** means the date of the first meeting of the council in terms of this Act. 15

(2) The following councils, namely the—

(a) South African Council for the Architectural Profession, established by the Architectural Profession Act, 2000 (Act No. 44 of 2000);

(b) South African Council for the Project and Construction Management Professions, established by the Project and Construction Management Professions Act, 2000 (Act No. 48 of 2000); 20

(c) Engineering Council of South Africa, established by the Engineering Profession Act, 2000 (Act No. 46 of 2000);

(d) South African Council for the Landscape Architectural Profession, established by the Landscape Architectural Profession Act, 2000 (Act No. 45 of 2000); 25

(e) South African Council for the Property Valuers Profession, established by the Property Valuers Profession Act, 2000 (Act No. 47 of 2000);

(f) South African Council for the Quantity Surveying Profession, established by the Quantity Surveying Profession Act, 2000 (Act No. 49 of 2000); and 30

(g) Council for the Built Environment, established by Council for the Built Environment Act, 2000 (Act No. 43 of 2000),

continues to exist, and may perform their functions, after the commencement date until the effective date.

(2) The councils referred to in subsection (2)(a) to (f) must within 30 days from the date of commencement of section 15, invite nominations for the first appointment of members of professional boards under this Act. 35

(3) The chief executive officer of the council referred to in subsection (2)(g) is the acting registrar of the council until a registrar is appointed.

(4) From the effective date, all rights, obligations, assets and liabilities acquired or incurred by the councils referred to in subsection (2)(a) to (g) vest in the council and the council must be regarded as having acquired or incurred those rights, obligations, assets and liabilities in terms of this Act. 40

(5) From the effective date and subject to the Labour Relations Act, 1995 (Act No. 66 of 1995), all employees of the councils referred to in subsection (2) must be regarded as being employees of the council. 45

(6) Any act performed, decision taken or rule made or purported to have been so performed, taken or made in terms of the laws establishing the councils referred to in subsection (2)(a) to (g) remains valid unless repealed under this Act.

(7) Any notice issued or exemption granted by the Minister in terms of any of the laws establishing the councils referred to in subsection (2)(a) to (g) remains valid unless repealed under this Act. 50

(8) Any person who at the commencement date is registered in terms of any of the laws establishing the councils referred to in subsection (2) (a) to (f) must be regarded as having been registered in the corresponding category provided for in this Act. 55

(9) From the effective date, any register maintained and kept in terms of any of the laws establishing the councils referred to in subsection (2) (a) to (f), must be regarded as having been incorporated in and must be considered to form part of a register to be maintained and kept in terms of this Act.

(10) Any action taken in terms of any of the laws establishing the councils referred to in subsection (2)(a) to (g), which is pending at the commencement of this Act, must be finalised in terms of the relevant provision of the law in question.

(11) The registrar of deeds concerned must, at the request of the council and on submission of the relevant title deeds and other documents, make the necessary entries and endorsements in respect of the relevant register, title deed and other document in his or her office in order to give effect to any transfer in terms of subsection (4), and no transfer duty, stamp duty or other fee is payable in respect of such transfer, entry or endorsement. 5

Repeal of laws 10

52. Subject to section 51, the laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

Short title and commencement

53. This Act is called the Built Environment Professions Act, 2008, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 15

SCHEDULE**LAWS REPEALED***(Section 52)*

No. and Year of Law	Title of Law	Extent of repeal
Act No. 43 of 2000	Council for the Built Environment Act, 2000	The whole
Act No. 44 of 2000	Architectural Profession Act, 2000	The whole
Act No. 45 of 2000	Landscape Architectural Profession Act, 2000	The whole
Act No. 46 of 2000	Engineering Profession Act, 2000	The whole
Act No. 47 of 2000	Property Valuers Profession Act, 2000	The whole
Act No. 48 of 2000	Project and Construction Management Professions Act, 2000	The whole
Act No. 49 of 2000	Quantity Surveying Profession Act, 2000	The whole

MEMORANDUM ON THE OBJECTS OF THE BUILT ENVIRONMENT PROFESSIONS BILL, 2008

1. BACKGROUND

In 2000, seven pieces of legislation were approved by Parliament in order to regulate the built environment; six of them regulating the various professions and the seventh establishing the Council for the Built Environment.

Eight years into the regulatory model established by the 2000 legislation, both the Department and the regulated professions have grappled with issues of access to the professions, transformation, the lack of a macro-strategy for the built environment professions and other shortcomings in the present regulatory model. It is these challenges that necessitate a revision of the present regulatory model.

2. OBJECTS OF BILL

- 2.1 The objects of the Bill are to—
- establish the South African Council for the Built Environment (“the Council”) and professional boards;
 - regulate the built environment professions in order to promote growth and transformation;
 - provide for registration of persons within the built environment professions;
 - provide for the protection of the public against unprofessional conduct by registered persons;
 - provide for the repeal of the laws establishing the current seven councils; and
 - promote and maintain the standards of education and training in the built environment professions.
- 2.2 **Chapter I** seeks to establish the Council as a juristic person, which will be subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999). It also seeks to—
- set out the functions, constitution and circumstances of dissolution of the Council;
 - provide for the appointment of the Registrar;
 - provide for the Minister’s authority to establish, change or reconstitute professional boards with regard to any built environment profession regulated in the Bill, as well as the functions of the said professional boards.
- 2.3 **Chapter II** provides for the Council’s power of control and the exercise of authority over all education and training, having as its object to qualify any person for the practicing of any built environment profession to which the provisions of this Bill apply, and for the professional boards to be education and training quality assurers for their built environment professions. The Chapter provides for compulsory registration with the Council as a pre-condition to practice a profession regulated by the Bill, sets out the mechanisms for such registration and criminalises failure to do so. The Chapter also gives the Minister the authority, after consultation with the Council, to prescribe the qualifications necessary for registration and to define the scope of any built environment profession that may be registered.
- 2.4 **Chapter III** provides for the investigation and prosecution of, as well as the sanction for, unprofessional conduct on the part of registered persons.
- 2.5 **Chapter IV** provides for the Minister’s competence to exempt any juristic person from the operation of any of the provisions of the Bill, and to make regulations on a range of matters designed to expedite the attainment of the objects of the Bill. The Council is empowered to make rules and adopt policies regulating its internal functioning. Also provided for is the prohibition of the recovery of remuneration in respect of any act specially pertaining to the profession of a registered person by an unregistered person and the prohibition against the holding by an unregistered person of an appointment that involves the performance of any act which an unregistered person may not perform.

Transitional arrangements include the vesting in the Council of all rights, obligations, assets and liabilities acquired or incurred by the existing councils on the date of the first meeting of the Council constituted under this Act and the continued registration in a corresponding category of any person registered in terms of any of the Acts establishing the professional councils existing as at the commencement of this Act.

3. CONSULTATION

In March 2008, the Department published a draft policy document outlining its proposals for the realignment of the regulatory framework of the built environment professions and inviting written comments. Consultative meetings were held in March and April 2008 with members of the public, industry stakeholders and public sector stakeholders. Written and oral comments were received, including from the Department of Education and the National Treasury. The comments have been considered in the drafting of the Bill.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

All of the current employees of the existing councils will be deemed to be employees of the Council in terms of the Bill. It is envisaged that the chief executive officer of the Council for the Built Environment will continue as the acting Registrar of the Council until the Council is in a position to appoint a new Registrar.

5. FINANCIAL IMPLICATIONS FOR STATE

It is not envisaged that the Bill will have any financial implications for the State. It is envisaged that the Council will generate its funds through, inter alia, fees accruing to it in terms of the Bill, donations, grants, contributions and interest on investments.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Public Works are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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